



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

FOO/166833

PRELIMINARY RECITALS

Pursuant to a petition filed June 23, 2015, under Wis. Admin. Code § HA 3.03(1), to review a decision by the Office of the Inspector General (OIG) in regard to FoodShare benefits (FS), a telephonic hearing was held on July 14, 2015.

The issue for determination is whether a default judgment resulting from a fraud ordinance citation is sufficient to impose an FS Intentional Program Violation (IPV) disqualification.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

Petitioner's Representative:

[REDACTED]
[REDACTED]
[REDACTED]

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, Wisconsin 53703

By: Nadine Stankey

Office of the Inspector General (OIG)
Department of Health Services
1 West Wilson Street
Madison, WI 53701

ADMINISTRATIVE LAW JUDGE:

Kelly Cochrane
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Milwaukee County and has been a recipient of FS.

2. On April 17, 2015 a [REDACTED] issued a Default Judgment against the petitioner stating that petitioner did not appear at the court date on April 16, 2015, and that she was found guilty on a no contest plea of violating ordinance no. 30.05(7).
3. On April 27, 2015, the OIG notified petitioner that she was disqualified from Wisconsin FS for one year effective June 1, 2015 because she was “found guilty of Intentional Program Violation in a court of law”.

DISCUSSION

The definition of an intentional program violation (IPV) is found at 7 C.F.R. §273.16(c):

Intentional Program violations shall consist of having intentionally:

- (1) Made a false or misleading statement, or misrepresented, concealed or withheld facts;
or
- (2) Committed any act that constitutes a violation of the Food Stamp Act, the Food Stamp Program Regulations, or any State statute for the purpose of using, presenting, transferring, acquiring, receiving, possessing or trafficking of coupons, authorization cards or reusable documents used as part of an automated benefit delivery system (access device).

See also *FoodShare Wisconsin Handbook*, §3.14.1 and Wis. Stat. §946.92(1)(dm).

7 C.F.R. §273.16(b) provides as follows:

- (1) Individuals found to have committed an intentional Program violation either through an administrative disqualification hearing or by a Federal, State or local court, or who have signed either a waiver of right to an administrative disqualification hearing or a disqualification consent agreement in cases referred for prosecution, shall be ineligible to participate in the Program:
 - (i) For a period of twelve months for the first intentional Program violation....

See also *FS Handbook*, §3.14.1.

If the agency files an administrative disqualification hearing (ADH), the person must be notified at least 30 days before the hearing and have the opportunity to defend the charge. 7 C.F.R. §273.16(e)(3). The agency must prove the IPV by clear and convincing evidence. 7 C.F.R. §273.16(e)(6). If the person fails to appear for the ADH, the agency still must present its evidence to the administrative law judge, and the judge must determine if the IPV was committed based on clear and convincing evidence. 7 C.F.R. §273.16(e)(4).

The issue in this case is whether the finding of guilty of an ordinance violation on a default, no contest verdict is sufficient to warrant disqualification from the FS program. I conclude that it does not.

The first problem with this case is the information provided about the conviction. The Default Judgment issued to the petitioner states that she was found guilty of Ordinance no. 30.05(7), which is concerned with providing false information or failing to provide information to increase benefits unlawfully. When viewing the conviction online under the Wisconsin Circuit Court Access (also known as CCAP) report, it shows petitioner found guilty of Ordinance no. 30.05(2), which provides in relevant part that, “No person shall willfully do any act designed to interfere with the proper administration of the public assistance program...” See [REDACTED] brief dated July 1, 2015. Thus, there is some question of the actual charge and conviction.

Additionally, the ordinance does not provide specifically that the person committed an act for the “purpose of using, presenting, transferring, acquiring, receiving, possessing or trafficking of coupons.” Moreover, there is no evidence to show that the agency proved to the [REDACTED] tribunal, by clear and convincing evidence, that the petitioner committed an IPV. The OIG asserted at this hearing that an evidentiary hearing occurred in [REDACTED] on April 16, 2015; however no evidence was provided to show this. It contradicts the requirements of the 7 C.F.R. §273.16 that a person can be disqualified from the FS program with no showing by clear and convincing evidence (or a higher level of proof) that an IPV occurred. If a recipient fails to appear for an administrative disqualification hearing (ADH), the agency still must convince an administrative law judge that an IPV occurred. It makes no sense that the burden would be so high on an administrative tribunal with experience in handling ADHs, but that no such burden would be required before a local court that likely has little or no working knowledge of FS IPV procedures. If in fact an evidentiary hearing was held without petitioner’s appearance in [REDACTED], the agency should be able to produce evidence that [REDACTED]’s default of her was based on a showing that she was convicted for an act that meets a definition of an IPV. Finally, by virtue of her non-appearance in the ordinance case, the court entered a plea of no contest on petitioner’s behalf. Wis. Stat., §904.10 provides that a plea of no contest is not admissible in any civil or criminal proceeding against the person who made the plea. The OIG thus cannot utilize the no contest plea as a basis for moving against petitioner in an IPV action.

This decision does not prevent the OIG from moving forward with another IPV action against petitioner if in fact it has the evidence to support it.

CONCLUSIONS OF LAW

1. A default judgment finding petitioner guilty of violating a [REDACTED] ordinance is insufficient to impose an IPV sanction because (1) the ordinance does not refer to FS trafficking, (2) there is no evidence to show that clear and convincing evidence was presented to the [REDACTED] [REDACTED] showing petitioner committed an IPV before the court imposed the guilty verdict, and (3) a no contest plea is not admissible as a basis for a later proceeding against the person.

THEREFORE, it is

ORDERED

That the matter be remanded to the OIG with instructions to rescind the one-year IPV sanction against petitioner, within 10 days of this decision.

REQUEST FOR A REHEARING

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

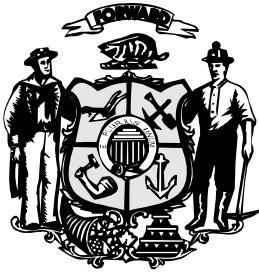
APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, Madison, Wisconsin 53703, **and** on those identified in this decision as “PARTIES IN INTEREST” **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Milwaukee,
Wisconsin, this 7th day of August, 2015

\sKelly Cochrane
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

Brian Hayes, Administrator
Suite 201
5005 University Avenue
Madison, WI 53705-5400

Telephone: (608) 266-3096
FAX: (608) 264-9885
email: DHAmail@wisconsin.gov
Internet: <http://dha.state.wi.us>

The preceding decision was sent to the following parties on August 7, 2015.

Office of the Inspector General
Division of Health Care Access and Accountability
[REDACTED]

NadineE.Stankey@dhs.wisconsin.gov